WP(C) 5039/2007
BEFORE
HON'BLE MR. JUSTICE RANJAN GOGOI
JUDGMENT AND ORDER (oral)

1. As prayed for by the learned counsels for the petitioner, the writ petition is taken up for final disposal at the admission stage.

2. An order dated 22.3.2005 passed by the Superintendent of Police (Communication), Assam, Guwahati, dismissing the petitioner from service as well as the appellate order dated 20th January 2006 dismissing the appeal filed by the petitioner against the order dated 22.3.2005 has been put to challenge in this writ petition.

3. I have heard Sri M. Bhuyan, learned counsel for the petitioner and Sri G. Soren, learned Govt. Advocate, Assam.

4. The petitioner at the relevant point of time was serving as a Constable (Rear Guard) in the headquarters of the Assam Police Radio Organisation at Guwahati. A charge memo dated 16.10.2004 was furnished to the petitioner levelling the following charge against him :

That, while you were posted at APRO HQ Guwahati an allegation was received from outsider Shri Purna Kt. Kalita of Majuli that on 17.7.2001 you received Rs.28,000/- (Rupees twenty eight thousand) from Shri Kalita in connection with the appointment of his son Shri Harendra Kalita at the residence of one Shri Kameswar Das in presence of Shri Kameswar Das and Shri Dwijen Kalita (teacher) of Majuli which is unlawful. On enquiry it is found to be true.

That, during enquiry on the matter conducted by Sri D. M. Baishya, Addl. S.P.(C) HQ-I, you had given statement before the officer on 28.6.2004 that you had no relation or link with Shri Purna Kt Kalita of Majuli and you did not know him. But on 10.8.2004 you had given statement before the officer stating that your statement given on 28.6.2004 that you did not know Shri Purna Kt Kalita was false thereby you exhibited indisciplined, unbecoming conduct and doubtful integrity.

5. The petitioner submitted his reply to the aforesaid charge denying the same. The reply of the petitioner not having been found to be satisfactory an Enquiry Officer was appointed to go into the charge levelled against the petitioner. In the enquiry proceedings held against the petitioner, the petitioner appeared and participated. Five witnesses were examined in support of the charge levelled. No defence witness was examined. On consideration of the evidence adduced in course of the enquiry the Enquiry Officer found the charge levelled against the petitioner to be proved and established. A copy of the enquiry report was thereafter made available to the petitioner and on consideration of his reply thereto the Disciplinary Authority agreed with the findings of the enquiry. Thereafter, the impugned orders have been passed.

6. A reading of the report of enquiry dated 14th February 2005, which has been enclosed to the writ petition as Annexure-5, would go to show that in support of the charge levelled the person who is stated to have made the payment of Rs.28,000/- to the petitioner in connection with appointment of his son i.e. Purna Kanta Kalita was examined as PW 1. The person in whose house at Majuli the aforesaid payment was allegedly made i.e. Shri Kameswar Das was examined as PW 2. Two other persons, namely, Shri Dwijen Saikia and Shri Ramani Das in whose presence the money was allegedly paid were examined as PW 3 and PW 4, respectively. All the aforesaid witnesses supported the charge levelled against the petitioner without any ambiguity in the depositions made. On the aforesaid basis as well as on the basis of the evidence of PW 5 which is to the effect that though, initially, the petitioner denied any association with Purna Kanta Kalita, subsequently, he admitted knowing the said person, the Enquiry Officer thought it appropriate

to take the view that the charge levelled against the petitioner stood fully proved.

7. The Court, having read and considered the evidence of PWs 1 to 4 as set out in the report of the Enquiry Officer dated 14th of February 2005, is of the view that no infirmity, whatsoever, can be found in the conclusions of the Enquiry Officer. Consequently, the decision of the Disciplinary Authority to impose the punishment of dismissal from service and the agreement with the said view as expressed by the appellate authority would appear to be in order.

8. Sri Bhuyan, learned counsel for the petitioner, has contended that on the date of the alleged occurrence i.e. 17.1.2001 the petitioner was not in Majuli but was on guard duty in the APRO headquarters from 11.00 A.M. to 4.00 P.M. Notwithstanding the fact that the said defence was not taken by the petitioner in his reply to the charge memo and/or before the Enquiry Officer, the appellate authority thought it proper to go into the same on the basis that if the version put forward by the petitioner is correct the charge levelled has to necessarily fail. The verification of the aforesaid version offered by the petitioner was made by the appellate authority by sending the signatures in the Guard Duty Register appearing against the name of the petitioner for comparison with some authenticated signatures of the petitioner, as obtained. The Forensic Science Laboratory to whom the matter was referred expressed the view that the signatures in the Guard Duty Register against the name of the petitioner are not the same as the authenticated signatures of the petitioner.

9. Sri Bhuyan, learned counsel for the petitioner, by referring to Regulation 15 of the Assam Police Manual, has submitted that under the said provision contained in the Police Manual the Guard Duty Register has to be put up daily before the Superintendent of Police or such other authorized officer who has to authenticate the same. In the present case, referring to the note appearing in the relevant page of the Guard Duty Register, Sri Bhuyan has submitted that such authentication had been made by the authorized officer which would go to show that the signatures appearing against the name of the petitioner in the Guard Duty Register is that of the petitioner.

10. The contention advanced cannot be accepted by the Court. What Regulation 15 requires is that the signature appearing against the names of the persons in the Guard Duty Register are put up before the concerned authority who will be required to authenticate the same. At the stage of authentication of the signatures in the Guard Duty Register the genuineness thereof is not an issue that would be expected to be investigated. If such signatures are subsequently proved by the expert to be not of the person concerned, the earlier authentication cannot stand in the way of the subsequent report of the experts as had happened in the present case.

11. The case against the petitioner having been proved by the evidence adduced in the course of the enquiry and the additional defence offered by the petitioner at the appellate stage having been rejected on the basis indicated above, the Court is of the view that no infirmity can be ascribed either to the decision or the decision making process to invite interference of the Court.

12. Writ petition, therefore, has to fail. It is accordingly dismissed. No cost.

13. At this stage, a further submission has been made by Sri Bhuyan, learned counsel for the petitioner, that the petitioner had been in service since 1989 and the punishment of dismissal is disproportionate to the charge levelled. The Court is not inclined to agree with Sri Bhuyan. The charge against the petitioner is receipt of Rs.28,000/- in exchange for a job in the police department in favour of the son of the person who had paid the money. Such conduct can hardly be

tolerated. The Court, therefore, is of the view that the punishment of dismissal in the facts of the case is justified and proportionate.